

**THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. 4:13-CR-253-RAS-
§ DDB
SHAWN LEE NELSON, §
§
Defendant. §

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Now before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on August 11, 2015, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Ernest Gonzalez.

On January 23, 2002, Defendant was sentenced by the Honorable United States District Judge Barbara M.G. Lynn to one hundred seventeen (117) months imprisonment followed by concurrent five (5) year terms of supervised release for the offenses of Armed Bank Robbery While in Possession of a Firearm and Using or Carrying a Firearm during a Crime of Violence. On December 4, 2009, Defendant completed his period of imprisonment and began service of his term of supervised release. Jurisdiction over this matter was accepted by the Honorable United States District Judge Richard A. Schell on October 18, 2013, and this case was transferred to the Eastern District of Texas from the Northern District of Texas on October 23, 2013 [Dkt. 1].

On July 27, 2015, the U.S. Probation Officer executed a Petition for Warrant or Summons for Offender Under Supervision [Dkt. 7]. The Petition asserted that Defendant

violated the following conditions: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from unlawful use of a controlled substance; and (3) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.

The Petition alleges that Defendant committed the following acts: (1) On March 7, 2013, in Denton County, Texas, under cause number F-2012-1878-B, Defendant was convicted of the offense of robbery and was sentenced to a term of twenty-two (22) years of imprisonment, the offense of theft and was sentenced to a term of one hundred eighty (180) days of imprisonment, and the offense of assault and was ordered to pay a \$500 fine along with court costs. Moreover, under cause number F-2012-1879-B, Defendant was convicted of the offense of evading arrest, and was sentenced to a term of twenty (20) years of imprisonment and all sentences were ordered to run concurrently; and (2) On June 18, 2012, Defendant submitted a urine specimen that tested positive for methamphetamine.

Prior to the Government putting on its case, Defendant entered a plea of true to allegation one, and the second and third allegations were withdrawn by the Government. Having considered the Petition and the plea of true to allegation one, the Court finds that Defendant did violate his conditions of supervised release by being convicted of the offenses of robbery, theft, assault, and evading arrest in violation of federal, state, and/or local law. The Court recommends that his supervised release be revoked.

Defendant waived his right to allocate before the District Judge and his right to object to the report and recommendation of this Court.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of thirty-three (33) months to run consecutive to any sentence of imprisonment Defendant is serving with no term of supervised release to follow. Defendant has paid restitution. At the hearing, the Parties agreed that restitution has been made and no further restitution is necessary.

The Court also recommends that Defendant be housed in the Bureau of Prisons, Ft. Worth FMC facility, if appropriate.

SIGNED this 11th day of August, 2015.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE